

CALIFORNIA DEPARTMENT OF INSURANCE  
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CALIFORNIA DEPARTMENT OF INSURANCE

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of  
  
Health Net Life Insurance Company  
  
Respondent.

File No. OSC-2012-00012

**ORDER TO SHOW CAUSE AND  
STATEMENT OF CHARGES**

**(California Insurance Code §§ 790.03,  
700(c), and 790.035)**

**ORDER TO SHOW CAUSE**

WHEREAS, the Insurance Commissioner of the State of California (hereafter, “the Commissioner”) has reason to believe that Health Net Life Insurance Company (hereinafter “Respondent”) has engaged in or is engaging in this State in unfair methods of competition or unfair or deceptive acts or practices set forth in the STATEMENT OF CHARGES contained herein, in violation of Sections 790 et seq. of the California Insurance Code and the Fair Claims Settlement Regulations of Title 10, Chapter 5, California Code of Regulations; and

WHEREAS, the Commissioner has reason to believe that RESPONDENT has engaged in conduct in violation of California’s Mental Health Parity Act, CIC Section 10144.5; and

WHEREAS, the Commissioner believes that a proceeding with respect to the alleged acts of RESPONDENT would be in the public interest;

NOW, THEREFORE, and pursuant to the provisions of CIC Sections 790.05, RESPONDENT is ordered to appear before the Commissioner on a date to be determined and

1 show cause, if any cause there be, why the Commissioner should not issue an Order requiring  
2 RESPONDENT to Cease and Desist from engaging in the acts and practices set forth in the  
3 STATEMENT OF CHARGES contained and as requested herein

4 **JURISDICTION AND PARTIES**

5 1. The California Department of Insurance (hereafter “Department”) brings this matter  
6 before the Commissioner pursuant to the provisions of Insurance Code § 790.05.

7 2. Respondent is, and at all relevant times has been, the holder of a Certificate of  
8 Authority issued by the Commissioner and is authorized to transact the business of insurance in  
9 California.

10 **STATUTES AND REGULATIONS**

11 3. Insurance Code § 790.03(h) enumerates sixteen (16) claims settlement practices that,  
12 when either knowingly committed on a single occasion, or performed with such frequency as to  
13 indicate a general business practice, are considered to be unfair claims settlement practices, and  
14 are thus prohibited.

15 4. Insurance Code § 790.03(h)(3) requires that insurer adopt and implement reasonable  
16 standards for the prompt investigation and processing of claims arising under insurance policies.

17 5. Insurance Code § 790.035 provides that “any person who engages in any unfair method  
18 of competition or any unfair or deceptive act or practice defined in § 790.03 is liable to the state  
19 for a civil penalty to be fixed by the Commissioner, not to exceed five thousand dollars (\$5,000)  
20 for each act, or, if the act or practice was willful, a civil penalty not to exceed ten thousand dollars  
21 (\$10,000) for each act. The Commissioner shall have the discretion to establish what constitutes  
22 an act.”

23 6. Insurance Code § 10144.5, California’s Mental Health Parity Act (hereafter “MHPA”),  
24 provides as follows:

25 (a) Every policy of disability insurance that covers hospital, medical, or surgical  
26 expenses in this state that is issued, amended, or renewed on or after July 1, 2000,  
27 shall provide coverage for the diagnosis and medically necessary treatment of  
28 severe mental illnesses of a person of any age, and of serious emotional

1 disturbances of a child, as specified in subdivisions (d) and (e), under the same  
2 terms and conditions applied to other medical conditions, as specified in  
3 subdivision (c).

4 (b) These benefits shall include the following:

- 5 (1) Outpatient services.
- 6 (2) Inpatient hospital services.
- 7 (3) Partial hospital services.
- 8 (4) Prescription drugs, if the policy or contract includes coverage for  
9 prescription drugs.

10 (c) The terms and conditions applied to the benefits required by this section that  
11 shall be applied equally to all benefits under the disability insurance policy shall  
12 include, but not be limited to, the following:

- 13 (1) Maximum lifetime benefits.
- 14 (2) Copayments and coinsurance.
- 15 (3) Individual and family deductibles.

16 (d) For the purposes of this section, "severe mental illnesses" shall include:

- 17 (1) Schizophrenia.
- 18 (2) Schizoaffective disorder.
- 19 (3) Bipolar disorder (manic-depressive illness).
- 20 (4) Major depressive disorders.
- 21 (5) Panic disorder.
- 22 (6) Obsessive-compulsive disorder.
- 23 (7) Pervasive developmental disorder or autism.
- 24 (8) Anorexia nervosa.
- 25 (9) Bulimia nervosa.

26 7. California Code of Regulations ("CCR"), Title 10, Chapter 5, Subchapter 7.5, Article 1  
27 contains the Fair Claims Settlement Practices Regulations "to promote the good faith, prompt,  
28 efficient and equitable settlement of claims." These regulations delineate certain minimum

standards for the settlement of claims which, when violated knowingly on a single occasion or performed with such frequency as to indicate a general business practice, shall constitute an unfair claims settlement practice within the meaning of Insurance Code § 790.03(h). Other acts or practices not specifically delineated in this set of regulations may also be unfair claims settlement practices subject to Insurance Code § 790.03. All licensees are required to have thorough knowledge of such regulations.

8. CCR, Title 10, § 2240(a)(7) defines basic health care services:

(a) “Basic health care services” means any of the following covered health care services provided for in the applicable insurance contract or certificate of coverage:

- (1) Physician services, including consultation and referral.
- (2) Hospital inpatient services and ambulatory care services.
- (3) Diagnostic laboratory diagnostic and therapeutic radiologic services.
- (4) Home health services.
- (5) Preventive health services.
- (6) Emergency health care services, including ambulance services.
- (7) Mental health care services including those intended to meet the requirements of Insurance Code 10144.5.
- (8) Any other health care or supportive services that are covered pursuant to an insurance contract.

9. CCR, Title 10, § 2240.1 addresses the adequacy and accessibility of providers required in an insurer’s network:

(c) In arranging for network provider services, insurers shall ensure that:

- (1) There is the equivalent of at least one full-time physician per 1,200 covered persons and at least the equivalent of one full-time primary care physician per 2,000 covered persons.

1 (2) There are primary care network providers with sufficient capacity to  
2 accept covered persons within 30 minutes or 15 miles of each covered  
3 person's residence or workplace.

4 (3) There are medically required network specialists who are certified or  
5 eligible for certification by the appropriate specialty board with sufficient  
6 capacity to accept covered persons within 60 minutes or 30 miles of a  
7 covered person's residence or workplace. Notwithstanding the above, the  
8 Commissioner may determine that certain medical needs require network  
9 specialty care located closer to covered persons when the nature and  
10 frequency of use of such health care services, and the standards of  
11 Insurance Code 10133.5(b) (3), support such modification.

12 (4) There are mental health professionals with skills appropriate to care for  
13 the mental health needs of covered persons and with sufficient capacity to  
14 accept covered persons within 30 minutes or 15 miles of a covered person's  
15 residence or workplace.

## 16 **BACKGROUND**

17 10. Applied Behavior Analysis (ABA) therapy is a form of behavioral therapy proven to  
18 be effective in the treatment of autism spectrum disorder. ABA therapy has been in existence for  
19 several decades and has been broadly used as an important proven therapeutic intervention for  
20 autistic children. ABA therapy is widely understood by the medical community to be the  
21 standard of care for autistic children.

22 11. In numerous prior cases doctors with special qualifications in the area of autism such  
23 as child neurology and clinical neurophysiology have conducted independent medical reviews for  
24 the Department and have found that ABA therapy is an appropriate and medically necessary  
25 treatment.

26 12. On June 3, 2011 the Market Conduct Division of the Department issued a request for  
27 information (hereafter "Data Call") to California health insurers in an effort to determine the  
28 adequacy and accessibility of ABA therapy providers for their autistic insured patients.

1       13. The Department's Data Call requested that insurers submit a report showing the  
2 geographic distribution of behavioral intervention therapists in an insurer's network in relation to  
3 the insured population covered by a health insurer. In their reports the insurers were required to  
4 provide names and contact information for each of the providers capable of administering ABA, a  
5 type of behavioral intervention therapy.

6       14. In response to the Department's request, Respondent submitted a letter explaining its  
7 position on ABA therapy stating it does not believe that ABA therapy is a medical service and  
8 therefore does not maintain an adequate network of providers: "After considerable thought,  
9 Health Net Life takes the position that Applied Behavioral Analysis (ABA) is not a medical  
10 service; thus we have not specifically identified Behavior Analyst Certification Board (BACB)  
11 certified providers or contracted with a network of BACB-certified providers."

#### 12                                   **STATEMENT OF CHARGES**

##### 13   A. Failure to Provide In-Network Behavioral Intervention Therapy Providers As Required by 14   Provider Network Access Regulations

15       15. Title 10 CCR § 2240(a)(7) and § 2240.1(c)(4) require that an insurer's network  
16 provide access to mental health professionals with skills appropriate to care for the mental health  
17 needs of covered persons and with sufficient capacity to accept covered persons within 30  
18 minutes or 15 miles of a covered person's residence or workplace.

19       16. On June 3, 2011, the Department issued a request to Respondent for a listing of the in-  
20 network Behavioral Intervention Therapy providers accessible to its insured's with PPO health  
21 insurance coverage.

22       17. In its reply to the Department's data request, Respondent asserted that it did not  
23 consider ABA therapy a medical service and therefore had not contracted with a network of  
24 providers.

25       18. By failing to maintain a provider network that includes mental health professionals  
26 with skills appropriate to care for the mental health needs of covered persons and with sufficient  
27 capacity to accept all covered insureds in California, Respondent is in violation of 10 CCR §  
28 2240(a)(7) and § 2240.1(c)(4).

1 B. Denial of Treatment in Violation of Mental Health Parity by Failing to Provide Access to  
2 Behavioral Intervention Therapy Providers.

3 19. Insurance Code § 10144.5, California's Mental Health Parity Act, requires that  
4 insurers provide coverage for the diagnosis and medically necessary treatment of severe mental  
5 illnesses including autism.

6 20. In its response to the Data Call, Respondent informed the Department that it did not  
7 maintain a network of Behavioral Intervention Therapy Providers available and accessible to its  
8 insureds.

9 21. Respondent has not ensured that access is available to a Provider capable of providing  
10 adequate treatment to all of its insureds with autism. By failing to ensure that all of its insureds  
11 have access to a Behavioral Intervention Therapy provider capable of providing adequate ABA  
12 therapy services, Respondent arbitrarily forces its insureds to receive a reduced out-of-network  
13 benefit for these mandated mental health services in violation of Insurance Code § 10144.5.  
14

15  
16 C. Failure to implement reasonable standards for the prompt investigation and processing of  
17 claims.

18 22. Insurance Code § 790.03(h)(3) requires that insurers adopt and implement reasonable  
19 standards for the prompt investigation and processing of claims arising under insurance policies.

20 23. In its response to the Department's Data Call, Respondent stated that it did not  
21 consider ABA therapy to be a medical service and therefore had not established a network of  
22 providers of ABA therapy.

23 24. ABA therapy is commonly and properly prescribed as a medical service in the  
24 treatment of a medical condition and has been considered by the medical community to be the  
25 standard of care for the treatment of autism for many years.

26 25. By refusing to recognize ABA therapy as a medical service and establish an adequate  
27 network of providers, Respondent has failed to implement adequate standards for the  
28

1 investigation of autism claims by their insured customers in violation of Insurance Code §  
2 790.03(h)(3).

3 **STATEMENT OF GROUNDS FOR POTENTIAL LIABILITY PURSUANT TO CIC**

4 **§§790 et seq.**

5 26. The facts alleged above in Paragraphs 11 through 15 constitute grounds under §  
6 790.05, for the Insurance Commissioner to order Respondent to cease and desist from engaging in  
7 such unfair acts or practices and to pay a civil penalty not to exceed five thousand dollars  
8 (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to exceed ten  
9 thousand dollars (\$10,000) for each act as set forth under § 790.035 .

10 **REQUEST FOR ORDER**

11 WHEREFORE, Petitioner prays for judgment against Respondent as follows:

12 1. An Order to Cease and Desist from engaging in the methods, acts, and  
13 practices set forth in the STATEMENT OF CHARGES as set forth above;

14 2. For acts in violation of Insurance Code Section 790.03 and the regulations  
15 promulgated pursuant to Section 790.10 of the Insurance Code, as set forth above, a civil  
16 penalty not to exceed five thousand dollars (\$5,000) for each act or, if the act or practice  
17 was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each act;

18 3. Full restitution or reimbursement for acts or omissions in violation of the above-  
19 cited provisions of law; and,

20 4. Costs incurred by the Department in bringing this action and any future costs to  
21 the Department to ensure compliance.

22  
23 CALIFORNIA DEPARTMENT OF INSURANCE

24 Dated: February 23, 2012

By \_\_\_\_/s/\_\_\_\_\_  
Teresa R. Campbell  
Assistant Chief Counsel